

EXHIBIT 5

Declaration of Michael Cannon, Defense
Logistics Agency

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

THE GENERAL LAND OFFICE OF THE STATE OF TEXAS, and DAWN BUCKINGHAM, M.D., in her official capacity as Commissioner of the Texas General Land Office,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY; and ALEJANDRO MAYORKAS, in his official capacity as Secretary of the Department of Homeland Security,

Defendants.

Civil Action No. 7:21-cv-00272

THE STATE OF MISSOURI; THE STATE OF TEXAS,

Plaintiffs,

v.

JOSEPH R. BIDEN, in his official capacity as President of the United States, *et al.*

Defendants.

Civil Action No. 7:21-cv-00420
(formerly No. 6:21-cv-00052)

DECLARATION OF MICHAEL O. CANNON

I, Michael O. Cannon, declare as follows:

1. I currently serve as the Director, Defense Logistics Agency (DLA) Disposition Services and lead nearly 1,500 military and civilian personnel stationed at 73 sites in 15 countries, 41 states and three U.S. territories. DLA Disposition Services supports the Department of Defense (DoD) by disposing of material no longer needed by DoD entities through

responsible property reuse, transfer, donation, sale or disposal on service contract or as hazardous waste. I have been the Director of DLA Disposition Services since 2014 and was inducted into the Senior Executive Service in November 2014. I previously served on active duty with the United States Air Force for more than 33 years, retiring with the rank of Colonel.

2. The Defense Logistics Agency (DLA) is designated as a Combat Support Agency in 10 USC 193 responsible for supply or service activities common to all military departments. DLA manages the global supply chain for DoD and interagency partners by providing procurement, storage, distribution, disposition, and other technical services. Among its other duties, DLA Disposition Services is a Major Subordinate Command within DLA responsible for disposal of excess DoD property, scrap, hazardous waste, and property requiring demilitarization.
3. Based upon my current and past job responsibilities, I am familiar with the DLA excess property disposition process and the actions taken by DLA to dispose of excess border wall construction materials. This declaration is based on my own personal knowledge and information made available to me in the course of my official duties.
4. In December 2023, Congress passed Section 2890 of the National Defense Authorization for Fiscal Year 2024, which required DoD to “submit to Congress a plan to use, transfer, or donate to States on the southern border of the United States all ‘covered materials,’ with prioritization given to the refurbishment and or maintenance of ports of entry along the southwest border and construction projects aimed at stopping illicit human and vehicle traffic along the border of the United States with Mexico.” Congress defined the term “covered materials” to mean “all remaining construction materials currently possessed by the United

States Government that were purchased under section 2808 and 284 of title 10, United States Code, from fiscal years 2017 through 2021, including bollards and Nucor tubular square structural tubes.”

5. DoD submitted the required plan under NDAA, Section 2890, to Congress on March 14, 2024 (hereinafter “NDAA Disposal Plan”). In the NDAA Disposal Plan, DoD relayed that DoD will use, transfer, or donate covered materials through implementation of existing policies, federal regulations and processes governing the disposition of excess and surplus materials. Those policies and processes are set forth in Department of Defense Manual (DoDM) 4160.21, Volumes 1-4, “Defense Material Disposition: Disposal Guidance and Procedures,” October 22, 2015, Incorporating Change 4, August 31, 2022, and Part 102 of Title 41, Code of Federal Regulations (CFR), also known as the Federal Management Regulation (FMR). The process includes an DoD internal screening cycle, a “special programs” screening cycle, and a federal agencies screening cycle prior to the transfer of items outside of the federal government. Section 2890 then gives States on the southern border a preference for the remaining covered materials and allowed the covered material to be donated to these States at no cost. There was no limit on the amount of material that other federal agencies or States could request. States receiving this donated material through Section 2890 were only responsible for the transportation costs to move material from its stored location and were required to sign a certification that these material would be “exclusively used for the refurbishment or maintenance of ports of entry along the southwest border or construction projects aimed at stopping illicit human and vehicle traffic along the border of the United States with Mexico.” DLA managed this disposition process for DoD.

6. The NDAA Disposal Plan required DoD components to declare any covered materials and to complete all turn-in documentation required to transfer the property to DLA. Per that Plan, all covered materials would remain at their current locations, including contractor locations or leased locations, while the covered materials went through the disposition process. DLA Disposition Services receipt-in-place processes were used, which allows DLA to screen and allocate property at current locations, rather than requiring interim transportation of the covered material to DLA field sites, which would have been a significant additional expense.
7. Pursuant to the NDAA Disposal Plan, from the end of March 2024 until the date of this declaration, DLA received from the U.S. Army Corps of Engineers (USACE) approximately 26,000 items for disposition. The first turn in of material from USACE was made at the end of March 2024 and two other significant tranches of material were turned in during April 2024. Smaller amounts of material were turned in as late as December 6, 2024, as those items were discovered as USACE storage locations were cleared of material. The items turned in by USACE primarily consisted of steel bollard panels, in addition to a small number of other non-bollard barrier construction materials including gate parts and drainage material.
8. Working through the priority disposition process set forth in NDAA Disposal Plan, the first requisition of material from another federal agency came from Customs and Border Protection (CBP) on April 25, 2024 for 306 eight-foot x 20- 32 foot bollard panels. The State of Texas made its first request for property on May 14, 2024 for 1435 eight-foot x 20- 32 foot bollard panels. Overall, DLA transferred approximately 12,000 bollard panels to CBP and approximately 2,500 panels to the State of Texas, and 50 miscellaneous items to State and local agencies in California. At the conclusion of the initial reutilization, transfer

and donation (RTD) process, roughly 10,700 bollard panels remained unclaimed by Federal, State, and local government entities as of June 2024, along with other items.

9. In accordance with the NDAA Disposal Plan, in order to dispose of the remaining covered material not requested through the RTD screening process, DLA followed established processes and regulations for the sale of surplus material. Sale of material is the standard next step in the disposal process mandated by federal regulations when property is not requested through the reutilization, transfer or donation process.
10. As part of its process, DLA had two preexisting sales contracts with IronPlanet (aka GovPlanet) for the disposition of any useable surplus DoD property in the United States. These contracts were firm-fixed-price sales contracts which required IronPlanet to pay DoD a percentage of the original acquisition value of each item. The terms of these pre-existing contracts were for three to five years in length and had upper limits on the amount of property that DoD could require IronPlanet to purchase, but the scope covered all useable DoD surplus material. One of these preexisting contracts with IronPlanet covered all States in the west, including Arizona, New Mexico and Texas, where USACE had the remaining covered border wall material stored.
11. DLA negotiated a modification to this preexisting contract with IronPlanet to set specific conditions for removal of property at six (6) USACE leased or contracted locations which included over 6000 covered material items. The modification required IronPlanet to “remove all property from all sites in an expedited manner” with final removals “as soon as practicable.” This provision was included in order to reduce the storage costs to DoD as soon as possible, in order to comply with provisions in and the intent of Section 2890. Another provision in the modification established the process for title transfer of the property

at these non-DoD receipt in place locations, and it was agreed that title would pass on each truckload of material upon signature of an IronPlanet representative and a DLA representative after quantity and nomenclature of material was verified. IronPlanet submitted a detailed removal plan on June 21, 2024 for all six sites and removals began on June 25, 2024. IronPlanet's removal plan contemplated completion of removals at all six sites by September 22, 2024 with one site receiving as many as 16 truckloads per day. IronPlanet utilized flatbed tractor trailer trucks on a near daily basis between late June and early September to move the bollard panels (approx. 4-5 per truck) to IronPlanet's own storage yards.

12. While DoD has no involvement or control over IronPlanet's decisions with regard to the re-sale of material purchased from DLA, my staff regularly monitors their weekly Wednesday auction site which is where they sell the majority of material purchased through their DLA contracts. My staff reported to me that IronPlanet made their first sale of covered material border wall bollard panels on July 10, 2024 by auctioning 2 lots of bollard wall panels with each lot having 4-5 panels. IronPlanet has consistently advertised 3-5 lots of border wall panels with 4-5 panels in each lot on every Wednesday auction since July 10, 2024.
13. IronPlanet had been unwilling to accept approximately 4500 items of covered material at three other locations through the modification to the existing contract due to the remote locations in Arizona where this material was being stored and because many of the bollard panels were filled with concrete grout, which made them more difficult to transport. Accordingly, in late June 2024, DLA initiated a separate competitive sales contract for this covered material by placing an Invitation for Bids (IFB) on SAM.GOV in accordance with our normal sales processes. The solicitation remained open for 30 days. While DLA

received several bid offers, several of the offerors cancelled their bids after examining the material and gaining appreciation for the challenges involved in removing material from the remote locations where they were stored. DLA continued to vet potential buyers in accordance with our existing sales processes but in early October 2024 ultimately cancelled this solicitation after determining that none of the bidders had the requisite capability to remove the panels in a timely enough manner to support reduced storage costs to DoD.

14. Therefore, in October 2024, DLA re-approached IronPlanet about buying these remaining items at the three remote locations through a DLA preexisting contract. IronPlanet agreed and DLA executed a second contract modification with IronPlanet under substantially all the same terms as the first modification. Even though these bollards were stored at three sites in remote areas of Arizona that presented unique transportation challenges for heavy-duty flatbed trucks, IronPlanet submitted their removal plan with the goal of having all three sites emptied within 43 days.
15. IronPlanet began removing the bollards from the three Arizona sites on October 28, 2024. Since that date, IronPlanet has transported bollards via flat-bed trucks from these sites on a nearly daily basis to IronPlanet's own storage yards.
16. As of December 23, 2024, DLA has disposed of nearly all of the 26,000 items it received for disposition from USACE under the NDAA Disposal Plan. As of the signing of this declaration there are 4 bollard wall panels at Nogales AZ that IronPlanet has scheduled to pick up on December 23, 2024. Additionally, there are 182 items going through the reutilization, transfer and donation cycle mandated in Section 2890. These 182 items consist of low water crossing gates, misc. gate parts and misc. drainage parts.

17. DLA expended its own funds to support disposal of the surplus border barrier construction materials and to execute the NDAA Disposal Plan. DLA operates as a Defense Working Capital Fund (DWCF) under the authority of 10 U.S.C. § 2201 and all services rendered to our customers must be reimbursed. For all border wall material DLA has received from USACE, USACE has provided reimbursement under existing DoD reimbursement process through which the USACE/Army account is charged. While DLA can support other non-DoD federal entities with disposal support, when DLA agrees to provide that type of support, the non-DoD federal entity must enter into a Memorandum of Agreement (MOA) or Federal Treasury 7600A agreement with DLA and provide reimbursement under an Economy Act order pursuant to 31 USC 1535. DLA has not entered into a MOA or 7600A with DHS and has not received DHS funds under an Economy Act order nor has it relied on DHS's fiscal year 2020 or 2021 barrier system appropriations for any purpose, to include disposition of border barrier construction materials.

This declaration is made pursuant to 28 U.S.C. 1746. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 23rd day of December 2024

CANNON.MICHAEL.O.116542481
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 Digitally signed by
 CANNON.MICHAEL.O.116542481
 Date: 2024.12.23 14:05:28 -05'00'

Michael O. Cannon
 Director, DLA Disposition Services